Supreme Court, U.S.
FILED
OCT 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-205

In the Supreme Court of the United States

October Term, 1986

HOWARD TRUCKING COMPANY, INC.,

Petitioner,

v.

CORRECTED COPY

JOHN A. STASSI, II, ARNOLD M. LUPIN, ALAN N. JACOBS, ERNEST E. CHERRIE, JR. AND KENNETH N. ADATTO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

This brief is respectfully submitted on behalf of respondents, John A. Stassi, II, Arnold M. Lupin, Alan N. Jacobs, Ernest E. Cherrie, Jr. and Kenneth N. Adatto (hereafter "defendants"), in opposition to the petition of Howard Trucking Company, Inc. (hereafter "plaintiff") for a writ of certiorari to review the opinion of the Supreme Court of Louisiana in this case, which is reported at 485 So.2d 915 (1986).[1]

[1] The opinion of the Court of Appeal, Fifth Circuit, State of Louisiana, is reported at 474 So.2d 955 (1985), and a correct copy of the judgment and unreported opinion of the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana, is attached hereto.

STATEMENT OF THE CASE

1. *Statement of Facts*

This suit was filed by plaintiff on October 25, 1982 to collect money allegedly owed to it by Orleans-Iberia, Inc. from the latter's guarantors, who are the named defendants herein. The petition alleges that plaintiff "leased" certain vehicles and oilfield hauling equipment (hereafter "the equipment") to Orleans-Iberia, Inc. and several corporations that merged into Orleans-Iberia, Inc. (hereafter referred to collectively as "Orleans-Iberia"), and that defendants, who signed as guarantors for the various corporations, are liable for all installments of "rent" allegedly owed by Orleans-Iberia under the claimed leases.

On October 19, 1982, Orleans-Iberia invoked bankruptcy proceedings by filing a petition for relief under Chapter 11 of the Bankruptcy Code, entitled *In re: Orleans-Iberia, Inc., Debtor,* No. 82-02161 K on the docket of the United States Bankruptcy Court for the Eastern District of Louisiana. During the Chapter 11 proceedings, plaintiff successfully petitioned the Bankruptcy Court for a return of the equipment included under the various contracts, and thereafter sold it at a nonjudicial sale without appraisal.

Plaintiff then attempted in this action to collect the deficiency between the net private sale price of the equipment and the amounts specified in the "lease agreements" it made with Orleans-Iberia. The trial court granted a motion by defendants for summary judgment, holding that the contracts in issue were not leases but conditional sale agreements and that plaintiff, by conducting a nonjudicial sale of the equipment without appraisal, had waived its right to a deficiency judgment by failing to comply with the requirements of the Louisiana Deficiency Judgment Act (hereafter the "Act"), LSA-R.S. §§ 13:4106-07. The

judgment of the trial court was affirmed on appeal to the Fifth Circuit Court of Appeal and, again, on writs to the Supreme Court of Louisiana.

2. *Proceedings Below*

This case represents yet another attempt to transform a sale into a lease by switching the label in contravention of well-established Louisiana law. Throughout the course of this litigation, plaintiff's position has been that because the parties to the underlying transaction called their agreement a "lease," the courts should be forever bound by that label. In opposing defendants' motion for summary judgment, plaintiff filed counter-affidavits by its president, accountant, and negotiator to the effect that defendant John A. Stassi wanted to call the contracts between plaintiff and Orleans-Iberia leases for tax purposes and that he also supplied printed lease forms that were signed by the parties to the transaction. Plaintiff's president, John Howard, on the other hand, allegedly "expressed indifference about whether the transaction was called a sale or a lease as long as he was asssured of getting his money." (Pl's "Original Brief on the Merits," filed in the Supreme Court of Louisiana, at 3)

The Louisiana courts rejected plaintiff's position since it ignores the crucial point that, whatever either or both of the parties wanted, their contract must be construed and given effect in accordance with Louisiana law. As was stated by the Fifth Circuit Court of Appeal in its opinion affirming the judgment of the trial court in this case:

> ...The trial court held, as a matter of law, the agreement was in the nature of a sale. The affidavits submitted by the plaintiff merely allege that John Stassi wanted to call the contracts

between the plaintiff and Orleans-Iberia leases for tax purposes and that Stassi supplied the printed lease forms which were signed by the parties. These facts were not contested by any party to the lawsuit and do not, in any event, bear upon the holding of the trial court. Therefore, from the record facts, we find the trial court did not err in determining there was no genuine issue of material fact for trial.

* * *

...It is well-established that we are not bound by the label placed on a written agreement or the subjective intent of the contracting parties, but must look to the substance of the transaction in determining rights and obligations. *Pastorek v. Lanier Systems Company,* 249 So.2d 224 (La. App. 4th Cir. 1971). Words will have import and can be binding only when they describe relationships which actually exist, but not when they are merely labels which are used to alter or disguise actual relationships. *Pastorek, supra.*

We agree with the reasoning of the trial court, as stated in its reasons for judgment, that the parties in fact entered into a sale agreement, and therefore, we find the trial court did not err in determing as a matter of law the defendants were entitled to summary judgment. See *B.N.O. Leasing Corp. v. Hollins & Hollins, Inc.,* 448 So.2d 1329 (La. App. 5th Cir. 1984).

474 So.2d at 959-60. Likewise, the Supreme Court of Louisiana held that the contracts between plaintiff and Orleans-Iberia were quite clearly conditional sales and that plaintiff waived the right to recover a deficiency judgment against defendant guarantors due to its admitted failure to comply

with the requirements of the Act. In particular, speaking through its Chief Justice, the Court noted that the Act "embodies a firm public policy of this state and requires strict adherence," and concluded that:

> We decline to override the long and consistent jurisprudence finding appraisal an absolute prequisite to a deficiency judgment.

485 So.2d at 919.

Despite the time-honored rule that this Court does not sit to review matters of state law, in its petition for a writ of certiorari, plaintiff once again asserts that the transaction between plaintiff and Orleans-Iberia was a "lease" based on the specious and totally unsupported argument that the label used by the parties to describe their relationship, rather than the substance of what they agreed upon, should determine their legal rights and obligations. (Petition at 7, 26-28)

In another variation of that same argument, plaintiff again also contends that defendants should not have been allowed to show that the underlying transaction was in fact a credit sale because plaintiff and Orleans-Iberia referred to it as a "lease" in the Bankruptcy Court, and the Bankruptcy Judge (Judge Kingsmill) used the same label in rejecting the contracts as a burden on the debtor's estate. (Minute Entry dated January 18, 1983, App. to Petition at 45a) However, neither plaintiff nor Orleans-Iberia asked the Bankruptcy Judge to decide who had title to the equipment, so that the issue was never even litigated in the Orleans-Iberia bankruptcy proceeding. The Fifth Circuit Court of Appeal aptly summed the matter up as follows:

> We find, however, that the parties were treating the agreement as a lease, and the Bankruptcy Judge simply had no reason to question this. Clearly, it was not an issue in the bankruptcy proceeding; therefore, there is no judgment binding on this matter.

474 So.2d at 960.

Lastly, plaintiff argued below, and again suggests in its writ application to this Court, that it was misled by the use of the "lease" label in the bankruptcy proceeding. (Petition at 26-28) Yet, plaintiff was represented by predecessor counsel at the October 5, 1981 closing of the sale of the equipment, in the guise of the so-called leases, and at every subsequent stage of this matter. Plaintiff therefore knew, or is presumed to have known, that the so-called "Leasing Agreements" were credit sales under the long settled jurisprudence of Louisiana. Again, as noted in the opinion of the Supreme Court of Louisiana, the Fifth Circuit Court of Appeal went to the crux of the matter in holding that:

> Equitable estoppel does not apply in this case because Howard Trucking was privy to all the same information that the defendants were aware of and thus it cannot be said that Howard Trucking justifiably and innocently relied on the representation by the defendants. Both parties were equally aware of the circumstances surrounding the contractual agreement which they entered into, and were in equally good positions to determine the nature and characterization of this contract, be it sale or lease.

474 So.2d at 961; 485 So.2d at 918.

We submit that the opinion below is firmly grounded in Louisiana law (as it existed when this case was decided) and, more importantly from the perspective of this Court, that it does not pose any conflict whatever with federal law and therefore should not be called up for review by this Court.

REASONS FOR DENYING THE WRIT

Plaintiff argues that a writ of certiorari should be granted in this case because the Bankruptcy Court's order rejecting the contracts between plaintiff and Orleans-Iberia constituted a final adjudication, binding on the defendants to this action, that the transaction was a lease rather than a credit sale. Even more implausibly, and without any support either in the record of this case or the applicable law, plaintiff contends that, "In Louisiana, the state Supreme Court has asserted that it is free to ignore the final ruling of the federal bankruptcy judge — a holding by that court which flies in the face of the United States Constitution itself." (Petition at 25)

The central point in this case, and the obvious answer to plaintiff's argument, is that the transaction between Orleans-Iberia and plaintiff was unmistakably a credit sale, and any reasonable person would have to recognize it as such under Louisiana law. To conclude nevertheless — as plaintiff has repeatedly without success urged the courts to do — that the transaction should be deemed a lease because both plaintiff and Orleans-Iberia referred to it as such in the Bankruptcy Court, and Judge Kingsmill used the same label in rejecting the contracts as a burden on the debtor's estate, is to elevate form over substance. The issue of title to the equipment was not presented to Judge Kingsmill or litigated in the

bankruptcy proceeding; rather, as stated by the Fifth Circuit Court of Appeal, "[T]he parties were treating the agreement as a lease, and the Bankruptcy Judge had no reason to question this."

As noted in the opinion of the Supreme Court of Louisiana, "Whether the contract was a lease or a sale does not depend on what defendants called it." 485 So.2d at 918. That is precisely the point. No matter how often the parties to the underlying transaction might call it a "lease," under the well-settled jurisprudence of Louisiana, it was always and unmistakably a credit sale. A sale cannot be transformed into a lease by switching the label, nor does a creditor obtain the right to disregard the safeguards of the Act because a busy bankruptcy judge, who has never even been asked to decide the issue of title, adopts the label used by the parties and appearing on the face of an instrument in connection with his ruling on an entirely different matter. Again, as noted by the Fifth Circuit Court of Appeal in this case, "... the Bankruptcy Court never actually adjudged the transaction to be per se a lease rather than a sale." 474 F.2d at 960.

Thus, it makes no difference whether one applies Louisiana law, federal law or, one suspects, the law of Timbuctu in assessing the impact of Judge Kingsmill's order on the parties to this action. The Bankruptcy Court order is simply irrelevant to the rights of the parties in this case and was accorded all the "full faith and credit" that it deserved. Plaintiff's argument is without merit since it conveniently overlooks both the substance of what the parties in fact agreed upon and the reality that Judge Kingsmill's order was nothing more nor less than a holding that the contracts between plaintiff and Orleans-Iberia should not be maintained for the benefit of general creditors.

In short, just as the label used by plaintiff and Orleans-Iberia to describe their relationship was false, the

basis for review of the decision below claimed by plaintiff is also false. That decision is perfectly compatible with federal law and, in fact, the petition does not even present a colorable federal question supporting the exercise of jurisdiction by this Court.[2]

A final word should be said regarding the petition for a writ of certiorari. Plaintiff suggests that this Court should grant review because the Supreme Court of Louisiana's opinion in this case "jeopardizes the rights of future litigants" and raises important issues of public policy and bankruptcy law. (Petition at 20, 23-28) In fact, quite the opposite is true. This case is important only to the immediate parties and, indeed, is now mainly of historical interest even in Louisiana. As noted in the Supreme Court's opinion, in 1985, the Louisiana Legislature amended and reenacted the Lease of Movables Act to provide that financed leases of movable property, which were previously construed in Louisiana as prohibited conditional sales transactions, "shall have the same effect as true leases for purposes of Louisiana law." 485 So.2d at 917 & n.4, citing LSA-R.S. § 3310(B). Moreover, this year, the Louisiana Deficiency Judgment Act was also amended and reenacted to provide that a debtor and creditor may agree to a private sale of the debtor's property without appraisal, while reserving the creditor's right to collect a deficiency

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[2] Plaintiff's contention that past decisions of this Court, applying federal rules of res judicata and collateral estoppel to the orders and judgments of bankruptcy courts, are in conflict with the decision below is simply incorrect. In all of the cases relied upon by plaintiff, this Court emphasized that the former judgment or order which bound the parties in subsequent litigation was based upon an actual trial of contested issues and a real decision on those issues by the earlier tribunal. *Heiser v. Woodruff*, 327 U.S. 726 (1946); *Stoll v. Gottlieb*, 305 U.S. 165 (1938); *Myers v. Int'l Trust Co.*, 263 U.S. 64 (1923). Since Judge Kingsmill's order in the Orleans-Iberia bankruptcy proceeding possessed none of these attributes, the Louisiana courts rightly held it did not prevent either party to this action from fully and fairly litigating the true nature of the contracts, as in fact occurred.

judgment if the sale proceeds are less than the agreed value of the property. Act 489 of 1986, enacting La. R.S. § 13:4108. Again, this legislation is contrary to prior Louisiana law which held that the Act's protection could not be waived even in the situation where the debtor had authorized the creditor to sell the property "as he sees fit" and to apply the sale proceeds to the outstanding indebtedness. *See, e.g., Justice v. Caballero,* 393 So.2d 866, 867 (La. App. 4th Cir. 1981). In view of these legislative developments, the decision in this case should have virtually no impact on future litigants in Louisiana. Rather, it is only important to the immediate parties, furnishing yet another reason why the petition for a writ of certiorari should be denied. *See, e.g., Layne & Bowler Corp. v. Western Well Works,* 261 U.S. 387, 393 (1923); *Rice v. Sioux City Cemetery,* 349 U.S. 70, 79 (1955).

CONCLUSION

Plaintiff has failed to show that a genuine issue of federal law exists warranting review of the decision below by this Court. This is simply another case in which a party to an agreement described as a "lease" but in reality a credit sale is making a futile attempt to overcome the effect of well-established Louisiana law. All of plaintiff's arguments are essentially variations on the same theme: that the contracts between the parties to the underlying transaction were not sales because they were called "leases" by plaintiff and Orleans-Iberia until issue was joined by the parties to this action. But neither the courts nor the defendants are bound by past labels — anymore than plaintiff would have been if it had sued defendants under a proper pleading and not resorted to a private sale of Orleans-Iberia's property. Looking to the substance of

this matter, it is clear that the contracts in issue were credit sales under Louisiana law and that plaintiff conducted a nonjudicial sale without appraisal of Orleans-Iberia's property, without the sanction of any court or the consent of anyone — either the principal debtor or the defendant guarantors. Plaintiff's suit for a deficiency judgment was therefore properly held barred under the Louisiana Deficiency Judgment Act.

Three courts have now rejected plaintiff's arguments, including the trial court, a unanimous panel of the Fifth Circuit Court of Appeal, and the Louisiana Supreme Court in an opinion by its Chief Justice. The opinions below demonstrate that plaintiff's claim that it has been denied "rights granted to it by a federal bankruptcy judge" (Petition at 10) is without merit, and the petition for a writ of certiorari should be denied.

Respectfully submitted,

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and Kenneth N. Adatto

Dated: New Orleans, Louisiana
October 19, 1986

CERTIFICATE OF SERVICE

I hereby certify that three copies of Respondents' Brief in Opposition were served by mail on counsel for petitioner, Hon. Mack E. Barham, Esq., this 19th day of October, 1986.

/s/ WILLIAM R. FORRESTER, JR.

DIV. K

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 273-546
c/w 273-547

DIVISION "K"

HOWARD TRUCKING CO., INC.

VS.

JOHN A. STASSI, II, ARNOLD M. LUPIN, ALAN N. JACOBS, ERNEST E. CHERRIE, JR., AND KENNETH N. ADATTO

FILED: October 29, 1984 /s/ Karen McEwen
DEPUTY CLERK

J U D G M E N T

This matter came for hearing on this 18th day of October, 1984 and submitted on briefs.

IT IS ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed on behalf of the defendants' John Stassi, II, Ken Addato, Arnold M. Lupin, Ernest E. Cherrie, Jr., and Alan N. Jacobs is granted as to the agreements concerning the movable equipment only.

JUDGMENT READ, RENDERED AND SIGNED IN GRETNA, LOUISIANA THIS 29th DAY OF OCTOBER, 1984.

/s/ Robert Murphy Foster
JUDGE

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.
Karen Mc Ewen

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 273-546
c/w 273-547

DIVISION "K"

HOWARD TRUCKING CO., INC.

VS.

JOHN A. STASSI, II, ARNOLD M. LUPIN, ALAN N. JACOBS, ERNEST E. CHERRIE, JR. AND KENNETH N. ADATTO

FILED: October 29, 1984 /s/ Karen McEwen
DEPUTY CLERK

REASONS FOR JUDGMENT

This case arises out of an alleged lease purchase agreement by which agreement plaintiff Howard Trucking Company "leased" to several corporations certain movables primarily heavy oil field trucks. The several corporations merged into Orleans-Iberia, Inc., which went into a reorganization bankruptcy. The defendants included John A. Stassi, II, and four other private individuals who signed as guarantors for the various corporations, whose guaranty agreements are still in force and effect.

The principal issue in this second Motion for Summary Judgment is whether the lease and "closing memorandum" made on contemporaneously when read in parri-materii are valid lease purchases or prohibited conditional sale agreements. The printed lease forms apparently provided by the defendants appear to be valid leases which could be enforced under Louisiana Law.

The "closing memorandum" is another question. The closing memorandums provide in paragraph III that the residual value of the movable equipment covered by the leases is $275,100.00, $275,000.00 which is to be and apparently was paid during the first 3 months of the lease (lease payments were called for and apparently paid for these several months). After the $275,000.00 was paid and all lease payments were made, Orleans-Iberia, Inc. could purchase the

equipment for the remaining $100.00 of the residuals. The title of the movables was to remain vested in the plaintiff Howard Trucking Company until all lease payments were made.

In fact, when Orleans-Iberia, Inc. went into bankruptcy, the referee ordered the movables to be returned to defendant Howard Trucking Company. Howard Trucking Company thereafter proceeded to a non-judicial sale of the movables. Howard Trucking Company now in these proceedings is attempting to collect the deficiency between the sale price, and the amounts specified in the movables lease on an amount of some $931,000.00 plus 1½ interest and attorney's fees.

This court in an earlier decision on a Summary Judgment on this same issue determined that leases were valid and collectable as a matter of law.

On March 13, 1984, the case of BNO Leasing Corporation Vs. Hollins & Hollins, Inc. was handed down by the La. Fifth Circuit Court of Appeals reported in 448 So.2d 1329 which was published on June 6, 1984 in West's Louisiana Cases.

The defendants refiled their motion suggesting to this court that the La. Fifth Circuit Court of Appeals ruling was binding on this court.

Although there are some minor differences in the status of the parties and lease terms between the instant case and BNO Vs. Hollins & Hollins, supra, this court grants the Motion for Summary Judgment as to No. 273-546 concerning the movables (not as to the consolidated case #273-547 between the same parties, but involving the lease of immovable property).

As then Judge Lemmon of the 4th Circuit Court of Appeals (now Justice Lemmon) said in Pastoreck Vs. Lanier Systems Company, 249 So.2d 224 (4th C.C.A. 1971):

> "We are bound to find the relationships as they exist and not simply as they have been described."

In this case the residual value was paid in advance rather than at the end of the lease, so that it is the thinnest disguise for a down payment. The so called lease payments are clearly installments and the $100.00 option to purchase this very valuable equipment does not obscure the fact that this is a conditional sale agreement.

GRETNA, LOUISIANA THIS 29th DAY OF OCTOBER, 1984.

JUDGE